IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 6547 of 2005

Between:

Ithadi Jalaiah, S/o. Bapanaiah,
Jarugumalli Mandal, Prakasam Dist.

..... PETITIONER

AND

1 The District Panchayat Officer, Ongole, Prakasam District.
2 The Grampanchayat, Chintalapalem rep. by its Panchayat Secretary.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the proceedings issued by the 1st respondent in Roc.No.3301/2005/P/A6, dt.18.02.2005 and consequent action of the 2nd respondent in not permitting the petitioner to act as member of 8th ward of Chintalapalem Grampanchayat is illegal, irregular and contrary to the provisions of A.P. Panchayatraj Act and the rules framed there under and also offends Art: 14 of the Constitution of India and consequently direct the respondents to continue him to act as member of 8 th ward of Chintalapalam grampanchayat for all purposes and pass such other order or orders.

Counsel for the Petitioner: MR.SATYANARAYANA NIMMAGADDA

Counsel for Respondent No.1: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for Respondent No.2:Mr.V.S.Ramachandra Murthy

This Court at the admission stage made the following :

O R D E R:

This writ petition is filed seeking to declare the proceedings dated 18-02-2005 passed by the first respondent disqualifying the petitioner from acting as the member of 8th ward of Chintalapalem Gram Panchayat under Section 19 (3) read with Section 22 of A.P. Panchayat Raj Act, 1994 (hereinafter referred to as 'the Act') as arbitrary and illegal.

The petitioner was elected as a member of 8th ward of the 2nd respondent- Gram Panchayat. It appears that the Divisional Panchayat Officer, Kandukur as well as the Mandal Parishad Development Officer, Jarugumalli Mandal submitted reports stating that the petitioner had three children even by the date of election and therefore he is disqualified to continue as the ward member. On the basis of the said reports, the first respondent passed the impugned proceedings holding that the petitioner incurred disqualification to continue as the ward member as per Sections 19 (3) and 22 of the Act.

The petitioner alleges that in pursuance of the impugned proceedings the second respondent is preventing him from acting as

the member of 8th ward of Chintalapalem Gram Panchayat. Hence, this writ petition contending that as per Section 22 of the Act, until the competent authority adjudicates the issue of alleged disqualification, the petitioner is entitled to act as the member.

I have heard the learned Counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

It is to be noted that the issue involved in this writ petition is squarely covered by a decision of the Division Bench in W.A.Nos.1537 & 1790 of 2003, dated 21-11-2003 in *CHAVA ROSAIAH v. CHINTALA VENKATESWARLU AND ANOTHER*. Having considered the scope of Sections 19 and 22 of the Act, in detail, the Division Bench held as under :

> *"… … on literal interpretation, it must be held that Section 22 being only an enabling provision conferring right on such member or Sarpanch who receives an intimation of allegations of his not being qualified or having become disqualified that within two months he can approach the District Court for a decision. It is only on decision being rendered by the District Court holding that a member or Sarpanch is not qualified or has become disqualified then consequential action can be taken. Section 20 operates automatically that a person or member subject to any disqualification specified in Section 19 and subject to Section 22 such member or Sarpanch shall cease to hold office. Opening words of Section 20 "subject to the provisions of Section 22 a member shall cease to hold Office" would rather support the view which we are taking that the disqualifications as specified in Section 19 would operate as a bar against a member or Sarpanch to hold the Office only when there is a decision rendered by District Court as envisaged in Section 22 and not otherwise."*

In the light of the ratio laid down in the said decision by the Division Bench, I am of the view that in the absence of any adjudication under Section 22 of the Act, no action can be taken to declare that the petitioner is disqualified and therefore, he cannot continue in the office. Hence, the first respondent ought not to have issued the impugned proceedings under Section 19 (3) read with Section 22 of the Act holding that the petitioner incurred disqualification and that he

is not entitled to continue as the member of 8th ward of Chintalapalem Grampanchayat. In the circumstances, the impugned proceedings are void and without jurisdiction and cannot be sustained.

Accordingly, the impugned proceedings dated 18-02-2005 are set aside and the Writ Petition is allowed. No costs.

(G. ROHINI, J)

Date:28-03-2005

Note:

Issue CC in three days.

B/o

ghn

To

1 The District Panchayat Officer, Ongole, Prakasam District.

2 The Panchayat Secretary, Grampanchayat, Chintalapalem.

3 Two CCs to the Government Pleader for Panchayat Raj and Rural Development, High Court of A.P., Hyderabad. (O.U.T.).

4 Two CD copies.